IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Gheesu Lal. Versus Smt. Bagdi Bai.

S.B. Criminal Misc. Petition No. 737/2004
against the order dated 3-6-2004 passed
by the Additional Sessions Judge, Nimbahera,
in Criminal Revision No. 31/2002.

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Date of Order: August 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. N.K. Rastogi, for the petitioner.
Mr. M.K. Garg and Mr. Niranjan Singh, for the non-petitioner.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against this order dated 3-6-2004 passed by the Additional Sessions Judge, Nimbahera, district Chittorgarh (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 31/2002, whereby the revision petition filed by the petitioner against the order dated 25-8-2001 passed by the Judicial Magistrate, Badi Sadri, Camp Mandaphiya, district Chittorgarh (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the parties.

Carefully gone through the orders passed by the trial Court as well as the Revisional Court and also the record of the trial Court.

It is contended by the learned counsel for the petitioner that the non-petitioner is not entitled for any maintenance allowance as she has contacted marriage with one Mangi Lal Teli on 22-6-1995 and, therefore, after the marriage of non-petitioner with Mangi Lal Teli, the marriage between the petitioner and the non-petitioner stands dissolved. It is also contended that the non-petitioner, at her own, deserted the petitioner since she was not in a position to conceive and procure a child being impotent and, therefore, she deserted the petitioner about sixteen years ago.

Learned counsel for the non-petitioner supported the orders passed by the Courts below and contended that there was no such evidence before the trial Court that the non-petitioner deserted the petitioner at her own or that she contacted the marriage with Mangi Lal Teli. Learned counsel for the non-petitioner has invited my attention to the statement of the petitioner himself, who appeared as NAW 1 before the trial Court, wherein he categorically stated that the non-petitioner is the legally wedded wife and the marriage between them was solemnized 22 years ago from the date of recording his statement. He also admitted that he contacted the second

marriage with one Shankari about fifteen years ago. However, he stated that now the non-petitioner has contacted the second marriage but he has not disclosed as to with whom and when. Learned counsel for the non-petitioner submits that the non-petitioner has not contacted second marriage with Mangi Lal Teli, rather she was kidnapped by certain persons, for which an FIR No. 209/1995 was registered for the offences under Sections 147, 344 and 366 IPC and after investigation, the police filed Challan against Ram Narian, Mangi Lal Teli, Narain, Gokul, Ganesh and Mst. Nandu etc. in the Court of the Additional Sessions Judge No.2, Chittorgarh, wherein the aforesaid accused persons faced the trial and the non-petitioner appeared as a witness against them and clearly stated that she was kidnapped by these persons.

The trial Court, on the basis of the evidence produced by the parties, came to the conclusion that the petitioner, despite having sufficient means, failed to maintain his wife and neglected her and, therefore, granted monthly allowance of maintenance in favour of the non-petitioner.

I have carefully gone through the statements of witnesses recorded by the trial Court, as also the orders passed by the Courts below. In my view, the trial Court was justified in granting the monthly allowance of maintenance in favour of the non-petitioner, as also in the revision, the Revisional Court

rightly did not find any error in the order of the trial Court. I find no error, illegality or perversity in the orders passed by the Courts below warranting interference in the inherent jurisdiction. It is settled law that power under Section 482 of the Code are to be exercised sparingly and cautiously in exceptional cases where it is brought to the Court that non-interference would result in serious miscarriage of justice or abuse of the process of the Court. The case in hand is not of that nature.

The criminal miscellaneous petition has no force and it is, therefore, dismissed.

(H.R. PANWAR), J.

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